



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 14, 2003

Ms. Beverly R. Rickhoff
Escamilla & Poneck, Inc.
P. O. Box 200
San Antonio, Texas 78205

OR2003-3249

Dear Ms. Rickhoff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181274.

The Harlandale Independent School District (the "district"), which you represent, received a request for the names, addresses, and telephone numbers of district employees who are age 50 and older. You claim that the requested information is not in existence and therefore, the district is not required to comply with the request. In the alternative, you claim that much of the requested information would be excepted from disclosure under sections 552.102 and 552.117 of the Government Code.¹ We have considered your arguments, and have also considered written comments submitted by the requestor. See Gov't Code § 552.304 (providing that member of public may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ diss'd); Open Records Decision No. 452 at 3 (1986). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ diss'd); Open Records Decision No. 561 at 8 (1990). You state that the district does not maintain the requested list,

¹ While you also cite section 552.024, we note that section 552.117 makes certain information confidential if a government employee or official makes a timely election under section 552.024. See Gov't Code §§ 552.024, 552.117. Therefore, section 552.024 is not itself an exception to disclosure under the Public Information Act (the "Act").

nor does it have this information in any accessible format. The Act does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Further, you do not indicate that locating and compiling the requested information could be accomplished by computer programming, or the manipulation of data. *See* Gov't Code § 552.231 (establishing procedure for responding to request for information that requires programming or manipulation of data). Based on your representations, we conclude that the district is not required to comply with the request for information. As we are able to make this determination, we do not address your other arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 181274

c: Ms. Shelli Nieto Macias
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